

IN THE MATTER OF	:	BEFORE THE
ALAN FRISK	:	HOWARD COUNTY
Appellant,	:	BOARD OF APPEALS
vs.	:	
THE ANIMAL MATTERS HEARING	:	Case No. BA 772-D
BOARD	:	
Appellee.	:	

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DECISION AND ORDER

The Howard County Board of Appeals (the "Board") convened for a hearing on August 6, 2020 in the above-captioned matter to hear the appeal of Alan Frisk (“Appellant”) from a decision of the Animal Matters Hearing Board ("AMHB") issued on February 18th, 2020 affirming the Animal Control Administrator’s Potentially Dangerous designation of two dogs, Coda and Copper (the “AMHB D & O”).

Due to the COVID-19 pandemic, the hearing was held remotely using the WebEx platform. Members of the Board present at the hearing were Chairperson Neveen Kurtom, Steven Hunt, James Howard, and William Santos. Chairperson Kurtom presided. Board member Gene Ryan was absent from the August 6, 2020 hearing. In accordance with Section 2.201(c) of the Board of Appeals’ Rules of Procedure, Board Member Ryan reviewed all the evidence submitted and listened to the recording of the hearing from which he was absent prior to deliberations of the appeal.

Appellant was represented by counsel, Jac Knust, at the hearing. The AMHB was represented by counsel, Tsega Girma, Senior Assistant County Solicitor. Erin Purdy, Senior Assistant County Solicitor, served as legal advisor for the Board.

STANDARD OF REVIEW

This case is an appeal on the record and the hearing was conducted in accordance with Section 2.210(b) of the Board's Rules of Procedure. Pursuant to Section 2.210(b)(6) of the Board's Rules of Procedures, in an appeal on the record, the appellant has the burden of establishing that the action by the administrative agency was not supported by substantial evidence, was correct as a matter of law, and was not arbitrary and capricious.

The standard of review applied by the Board in appeals on the record is the same standard of review employed by courts reviewing administrative decisions. *See Mortimer v. Howard Research & Devel. Corp.*, 83 Md. App. 432, 443 (1990) (describing applicable standard of review), *cert. denied*, 321 Md. 164 (1990). In recognition of the expertise of administrative decision-makers, the decision of an administrative agency “is *prima facie* correct and presumed valid” *Ramsay, Scarlett & Co. v. Comptroller*, 302 Md. 825, 834-35 (1985).

In reviewing the decision of the AMHB, the Board must apply the substantial evidence test. *Motor Vehicle Admin. Carpenter*, 424 Md. 401, 412 (2012). “‘Substantial evidence,’ as the test for reviewing factual findings of administrative agencies, has been defined as such ‘relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Bulluck v. Pelham Wood Apts.*, 283 Md. 505, 512, 390 (1978) (quoting *Snowden v. Mayor & C.C. of Balto.*, 224 Md. 443, 448 (1961)). “The scope of review ‘is limited to whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.’” *Id.* (quoting *Dickinson-Tidewater v. Supervisor*, 273 Md. 245, 256 (1974)). It is the “province of the agency to resolve conflicting evidence” and “where inconsistent inferences from the same evidence can be drawn, it is for the agency to draw the inferences.” *Id.* at 513 (citations omitted); *see also Mayor of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 398-99 (1979) (“The heart of the fact-finding process often

is the drawing of inferences made from evidence The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.”). The agency's decision is entitled to deference and must be reviewed “in the light most favorable to it.” *Motor Vehicle Admin. v. Carpenter*, 424 Md. 401, 412 (2012) (quoting *Maryland Aviation Admin. v. Noland*, 386 Md. 556, 571-72 (2005)). The reviewing body “may not substitute its judgment for the expertise of those persons who constitute the administrative agency.” *Id.*

Review of an agency's legal conclusions is less deferential and the agency's decision should be reversed if premised on an erroneous interpretation of the law. *People's Counsel for Baltimore Cnty. v. Surina*, 400 Md. 662, 682 (2007) (internal citations omitted). Nevertheless, in recognition of the expertise of agency officials, ““a degree of deference should often be accorded the position of the administrative agency’ whose task it is to interpret the ordinances and regulations the agency itself promulgated.” *Id.* at 682-83 (quoting *Marzulo v. Kahl*, 366 Md. 158, 172 (2001)).

Matters committed to an agency’s discretion are reviewed to determine if they are arbitrary or capricious. *Spencer v. Maryland Bd. of Pharmacy*, 380 Md. 515, 529-30 (2004). Matters within the agency’s discretion are “owe[d] a higher level of deference” than that afforded to an agency’s fact-finding or legal interpretations. *Id.* at 529. “[A]s long as an administrative agency's exercise of discretion does not violate regulations, statutes, common law principles, due process and other constitutional requirements, it is ordinarily unreviewable. . . .” *Id.* at 530-31 (quoting *Maryland State Police v. Ziegler*, 330 Md. 540, 557-58 (1993)).

THE PROCEEDINGS BEFORE THE AMHB

On April 24, 2019, Animal Control Administrator Deborah Baracco (“Ms. Baracco”) issued a letter to Alan Frisk stating that his dogs, Coda and Copper, were declared potentially dangerous as of that date pursuant to Howard County Code Section 17.303(a). The letter stated that on April 6, 2019, “your dogs, Coda and Cooper, adult spayed female Pit Bulls were involved in an attack to another domestic animal.” The letter further elaborates that “[a]t the time of the attack the victim dog was on its own property” and “Coda and Copper were at large having been exercising on [Mr. Frisk’s] property without any physical barrier.” “The victim dog was taken to a veterinarian having sustained multiple bite wounds that required surgery to repair.” The letter further explains the confinement and control measures required to be completed by the deadline. The letter also advised Appellant of his right to appeal the decision to the AMHB. Mr. Frisk submitted a notice of appeal on April 26, 2019.

On November 19, 2019, the AMHB heard the appeal in case number 19-028. The AMHB heard testimony from three witnesses: Ms. Baracco, Appellant, and Lori Overstreet, the next-door neighbor of Appellant. The AMHB decision summarized the testimony of each witness.

Ms. Baracco testified in support of her April 24, 2019 “Potentially Dangerous Animal” declaration. The AMHB summarized her testimony stating that Ms. Baracco testified that on April 6, 2019, Coda and Copper were loose on their property unrestrained by a physical fence or lead with Alan Frisk. AMHB D & O p. 1. She further testified that both dogs left the property and entered a neighbor’s property and attacked the resident dog. *Id.* Appellant retrieved his dogs. *Id.* The victim dog’s owner and her husband were interviewed by two police officers and told the officers that the attack occurred on the reach porch/patio of their property. Ms. Baracco further stated that the officers also interviewed Appellant who stated that the attack occurred closer to the edge of the

property line but still not on his property. *Id.* Ms. Baracco also testified that the officers were approached by an uninvolved neighbor and stated that Coda and Copper are frequently running at large and have been involved in “fence fighting” incidents with other dogs. *Id.*

Administrator Baracco further testified that Section 17.303(a) of the Howard County Code states that an animal may be declared Potentially Dangerous if the animal has:

1. Bitten a person;
2. Attacked without provocation; or
3. While off its owner’s property, killed or inflicted severe injury to a domesticated animal.

Id. at 2. Administrator Baracco concluded that based on Coda and Copper’s unprovoked attack to another domestic animal she declared both dogs as potentially dangerous on April 24, 2019 and asked the AMHB to uphold the declarations. *Id.* During her testimony, Administrator Baracco submitted the following documents as exhibits: (1) Howard County Animal Control Activity Report containing Interviews, (2 a-b) Photographs depicting the wounds sustained by the victim dog, and (3) Veterinarian Report. *Id.*

The AMHB also summarized Appellant’s testimony as follows. *Id.* Appellant testified in opposition to the potentially dangerous declaration of Coda and Copper. *Id.* He stated that he owns Coda and his wife owns Copper. *Id.* Coda and Copper live with him and his wife at their residence. *Id.* Mr. Frisk stated that both dogs are highly socialized and love human attention. He further testified that his dogs have never acted aggressively to other dogs or children. *Id.*

Appellant testified that, on the day of the incident, he was carrying dirt up to the deck and he let Coda and Copper into the yard. He “said that Coda and Copper went over to greet and sniff Ben, the dog that lives in the neighboring home that backs up to his house. Mr. Frisk testified that Ben

got aggressive with Coda and Copper and started to bark and snarl.” *Id.* Appellant further testified that his dogs wear e-collar restraints, but he did not use the remote during the incident. *Id.* at 3. Appellant also testified that his property now has a six-foot tall fence. *Id.* Appellant submitted six exhibits: 1. Certified Professional Trainer correspondence; 2. Matthew Lim correspondence; 3. Nick Hruch correspondence; 4. Andrea Jones Affidavit; 5. Jean Yan Affidavit; and 6 (a-e). Photographs of Coda’s wounds. *Id.*

Ms. Lori Overstreet appeared at the hearing and testified. Her testimony was also summarized. She stated that she is the next-door neighbor of Appellant. *Id.* She further testified that the victim dog, Ben, “agitates other dogs in the neighborhood” and she put up a fence to stop Ben from agitating her dog. *Id.* She further stated that “Ben roams the neighborhood freely and agitates other dogs by barking at them and then running away.” *Id.*

In a Decision and Order rendered February 18, 2020, the AMHB affirmed the decision of the Animal Administrator “to declare ‘Coda and Copper’ as ‘Potentially Dangerous.’” Specifically, the AMHB found the following:

1. On April 6, 2019, Alan Frisk’s dogs, Coda and Copper, were involved in an attack of another domestic animal. At the time of the attack, the victim dog was on its own property. Coda and Copper were loose on their own property and not restrained by a fence or leash. Both Coda and Copper left their property and entered the neighbor’s property and attacked the resident dog. The victim dog was taken to a veterinarian having sustained multiple bite wounds that required surgery to repair.

2. Howard County Code Section 17.303(a) states that an animal may be declared Potentially Dangerous if the animal has:

1. Bitten a person;
2. Attacked without provocation; or
3. While off its owner's property, killed or inflicted severe injury to a domesticated animal.
4. Howard County Code Section 17.300(x) defines a "severe injury" as "a physical injury that results in lacerations requiring sutures or cosmetic surgery, broken bones, severe bruises, or deep puncture wounds." Howard County Code Section 17.300(w) defines an "owner" as "a person who keeps, possesses, harbors, has custody of, exercises control over, or has a property right in any animal, residence, or facility."
5. The AMHB found that Alan Frisk qualified as an owner of Coda and Copper pursuant to the Howard County Code.
6. On April 24, 2019, Ms. Baracco declared "Coda and Copper Potentially Dangerous." Ms. Baracco's declaration is supported by a preponderance of the evidence of record and contains no errors of law.

AMHB D & O pp. 3-4.

THE PROCEEDINGS BEFORE THE BOARD

On May 11, 2020, Mr. Knust, counsel for the Appellant, filed a Memorandum with the Board. On May 26, 2020, Ms. Girma filed a Reply Memorandum on behalf of the AMHB. On June 24, 2020, Mr. Knust filed a Response to the AMHB's Reply Memorandum. The Board members were provided with the entire record of the proceedings before the AMHB prior to the hearing. Prior to hearing arguments, the Howard County Code, the Howard County Charter, the petition of the Appellant, the Memorandum of the Appellant, the Reply Memorandum of the Appellee, and Appellant's Response to Appellee's Reply Memorandum were incorporated into the record by

reference. Both Mr. Knust and Ms. Girma made oral argument to the Board at its hearing on August 6, 2020.¹

Appellant argued that the AMHB failed to make adequate findings of fact and conclusions of law as to: (a) which section of the Howard County Code Coda and Copper violated, (b) which property the attack occurred; and (c) whether Coda and Copper attacked without provocation. Appellant Memo. at p. 1, 2. Appellant also argued that the AMHB failed to make adequate findings of fact and conclusions of law to determine that both Coda and Copper should have been declared Potentially Dangerous. Appellant Memo. at p. 2.

AMHB argues that the AMHB decision “cannot be deemed clearly erroneous, and/or arbitrary and capricious, and/or contrary to law considering the detailed findings of Animal Control Administrator Baracco as outlined in her letter dated April 24, 2019, the record, and evidence received during the hearing.” AMHB Reply Memo. at p. 7. Further, AMHB argues that the AMHB, after review of the testimony and evidence below it, resolved any factual conflicts and made credibility determinations when it concluded that “at the time of the attack, Coda and Copper left their property and entered the neighbor’s property and attacked the resident dog causing the dog to sustain ‘multiple bite wounds that required surgery to repair.’” AMHB Reply Memo. at p. 10 (quoting AMHB D&O at p. 3-4).

DISCUSSION

In reviewing the factual findings of the AMHB, the role of the Board is to determine if "reasoning minds could reasonably reach the conclusion reached by the agency from the facts in the

¹ In its brief, the AMHB argued that Appellant’s appeal was untimely because the AMHB decision was dated February 18, 2020 and Appellant’s Notice of Appeal was filed on March 26, 2020. Appellant filed a Response to the Reply Memorandum indicating that the date stamp on the envelope he alleged contained the decision was March 2, 2020 and argued that his appeal was timely. AMHB withdrew its timeliness argument during oral arguments heard on August 6, 2020. Thus, the Board is not addressing this argument.

record. . . ." *Liberty Nursing Ctr., Inc. v. Dep't of Health & Mental Hygiene*, 330 Md. 443, 443 (1993) (citing *Snowden v. Mayor & City Council of Baltimore*, 224 Md. 443, 448 (1961)). Appellant is correct that administrative agencies engaged in a quasi-judicial process must make findings of fact. *See, e.g., Walker v. Dep't of Housing and Community Develop.*, 422 Md. 80, 106 (2011). However, as AMHB points out, it did make factual findings after summarizing the testimony received at the hearing. Further, the Court of Appeals has instructed that the obligation to make factual findings can be satisfied by referring to evidence in the record to support its findings, which is sufficient to allow for meaningful judicial review. *See Critical Area Comm'n v. Moreland, LLC*, 418 Md. 111, 134 (2011).

It is well-settled law that a body reviewing the factual findings of an administrative agency may not substitute its judgment for that of the agency. *Bullock v. Pelham Woods Apts.*, 283 Md. 505, 512-13 (1985). It is also the job of the agency – not the reviewing body – to weigh conflicting evidence. *Id.* This deferential standard acknowledges the expertise of administrative decision-makers. *Id.* Thus, if the Appellant – or even the Board members – believe the evidence should have been weighed differently, the AMHB's factual findings may not be overturned if supported by substantial evidence.

Here, the AMHB summarized the testimony given and then, in a designated section, set forth the AMHB's factual findings and conclusions of law. In those factual findings, the AMHB found that the Coda and Copper "were involved in an attack to another domestic animal," the "victim dog was on its own property" and "Coda and Copper left their property and entered the neighbor's property and attacked the resident dog." Further, the AMHB concluded that the factual findings supported the Coda and Copper's "Potentially Dangerous" declaration by Ms. Baracco.

Appellant argues that the AMHB did not specify which property the attack occurred and did not make a finding about whether Coda and Copper were provoked prior to attacking. However, the AMHB did make factual findings and articulated those in its Decision and Order. Ms. Baracco's testimony and the exhibits she submitted is sufficient evidence upon which the AMHB could reasonably have concluded that the attack occurred on the neighbor's property and Coda and Copper attacked without provocation. Further, Appellant testified that he did not know where his property lines were and thus, he did not know whether the attack occurred on his property or the neighbor's. But, as Ms. Baracco testified, when interviewed by the responding officers, Appellant stated that Coda and Copper ran down to the neighbor's yard "closer to the edge of the property line." AMHB Decision & Order, p. 1. The record reveals substantial evidence in the record that supports the findings of fact of the AMHB, namely the statement and supporting testimony from Ms. Baracco and the exhibits entered into evidence, which makes the decision "fairly debatable", and one in which this Board will not substitute its judgment for that of the AMHB.

Appellant argues that the AMHB did not make adequate findings of fact and conclusions of law to determine that both Coda and Copper were potentially dangerous dogs because the AMHB was not provided "any evidence as to which dog bit Ben." However, the AMHB was presented with evidence that both dogs participated in the attack of the victim dog. Specifically, the Howard County Animal Control Activity Report included the victim dog owner's statement that both dogs were involved in the attack. Additionally, the AMHB, in fact, concluded that both dogs "were involved in an attack to another domestic animal." AMHB D & O at p. 3. Further, the AMHB recited the applicable Howard County Code citation, which states a dog may be declared "Potentially Dangerous" if the animal was "attacked without provocation" or "while off its owner's property, killed or inflicted severe injury to a domesticated animal." H.C.C. § 17.303(a). Contrary to

Appellant's argument, Howard County Code Section 17.3030(a) does not require the AMHB to specifically identify which dog bit Ben. Rather, the Code provides multiple scenarios in which an animal can be declared "Potentially Dangerous." The Board finds this argument without merit.

While a review of an agency's interpretation of the law is less deferential than review of its factual findings, nevertheless "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight" and "the expertise of the agency in its own field should be respected." *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 69 (1999) (internal citations omitted). An administrative agency's application of the law to the facts of the case is entitled to "great deference." *Travers v. Baltimore Police Dep't*, 115 Md. App. 395, 420 (1997). Here, the evidence in the record supports the conclusion of the AMHB that Ms. Baracco's declaration of Coda and Copper "Potentially Dangerous" pursuant to Howard County Code Section 17.303(a) was supported by the preponderance of the evidence and contained no errors of law. Contrary to Appellant's argument that the AMHB did not make adequate findings of fact and conclusions of law concerning which section of the Howard County Code was violated by Coda and Copper, the Board concludes that the AMHB correctly interpreted the law and properly applied the facts supported by substantial evidence to that law to reach its conclusion. Appellant was notified as to which section of the Howard County Code was at issue in this matter. Accordingly, the record in this matter fails to support Appellant's contention.

Based upon a review of the record and after consideration of the written and oral arguments of the parties, this Board finds competent material and substantial evidence does exist to amply support each of the findings of fact made by the AMHB. For the reasons set out here, the Board concludes that the decision and order of the AMHB is supported by substantial evidence, is not clearly erroneous, and is not arbitrary and capricious.

CONCLUSIONS OF LAW

The decision of the AMHB is supported by substantial evidence in the record as a whole, and is not arbitrary or capricious, contrary to law, or clearly erroneous.

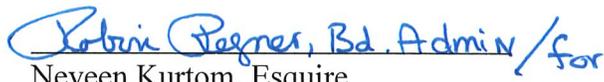
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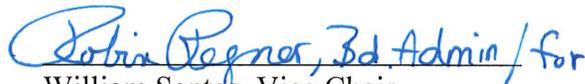
Based on the foregoing, it is this 9th day of NOVEMBER, 2020, by the Howard County Board of Appeals, hereby:

ORDERED, that the Decision and Order of the Howard County Animal Matters Hearing Board dated February 18, 2020, is AFFIRMED.

HOWARD COUNTY BOARD OF APPEALS

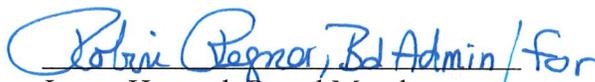

Robin Regner
Board Administrator


Neveen Kurtom, Esquire
Board Chair

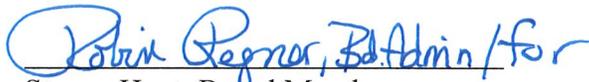

William Santos, Vice Chair

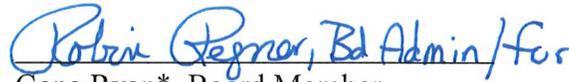
Prepared by:

Howard County Office of Law
Gary W. Kuc, County Solicitor


James Howard, Board Member


Erin B. Purdy
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Steven Hunt, Board Member


Gene Ryan*, Board Member

*THE ABOVE SIGNED BOARD MEMBER HEREBY CERTIFIES THAT HE LISTENED TO A RECORDING OF THE PORTIONS OF THE HEARING FROM WHICH HE WAS ABSENT AND HAS REVIEWED THE EVIDENCE OF RECORD PRIOR TO PARTICIPATING IN THE VOTE TO DECIDE THIS CASE.